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Administration of justice at the United Nations

Report of the Fifth Committee

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I. Introduction

1. At its 2nd plenary meeting, on 16 September 2011, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-sixth session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the item at its 15th and 25th meetings, on 1 November and 23 December 2011. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records (A/C.5/66/SR.15 and 25).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/66/224);

(b) Report of the Secretary-General on administration of justice at the United Nations (A/66/275 and Corr.1);

(c) Report of the Internal Justice Council on administration of justice at the United Nations (A/66/158);

(d) Report of the Advisory Committee on Administrative and Budgetary Questions (A/66/7/Add.6);

(e) Letter dated 4 November 2011 from the President of the General Assembly to the Chair of the Fifth Committee (A/C.5/66/9).

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II. Consideration of draft resolution A/C.5/66/L.10

4. At its 25th meeting, on 23 December, the Committee had before it a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/66/L.10), submitted by the Chair of the Committee on the basis of informal consultations coordinated by the representative of Canada.

5. At the same meeting, the Committee adopted draft resolution A/C.5/66/L.10 without a vote (see para. 6).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling section XI of its resolution 55/258 of 14 June 2001, its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007, 62/228 of 22 December 2007, 63/253 of 24 December 2008, 64/233 of 22 December 2009 and 65/251 of 24 December 2010, as well as its decisions 63/531 of 11 December 2008 and 65/513 of 6 December 2010,

Having considered the reports of the Secretary-General on administration of justice at the United Nations[1] and on the activities of the Office of the United Nations Ombudsman and Mediation Services,[2] the report of the Internal Justice Council on administration of justice at the United Nations,[3] the letter dated 4 November 2011 from the President of the General Assembly to the Chair of the Fifth Committee[4] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[5]

1. *Takes note* of the reports of the Secretary-General on administration of justice at the United Nations[1] and on the activities of the Office of the United Nations Ombudsman and Mediation Services;[2]

2. *Reaffirms* its resolutions 61/261, 62/228, 63/253, 64/233 and 65/251 regarding the establishment of the new system of administration of justice;

3. *Endorses* the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions,[5] subject to the provisions of the present resolution;

I
System of administration of justice

4. *Notes with appreciation* the achievements produced since the inception of the new system of administration of justice in regard to both the disposal of the backlog and the addressing of new cases, despite the numerous difficulties faced during the implementation of the new system of administration of justice;

5. *Acknowledges* the evolving nature of the new system of administration of justice and the need to carefully monitor its implementation to ensure that it remains within the parameters set out by the General Assembly;

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[1] A/66/275 and Corr.1.
[2] A/66/224.
[3] A/66/158.
[4] A/C.5/66/9.
[5] A/66/7/Add.6.

6. *Stresses* that all elements of the new system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the General Assembly;

7. *Emphasizes* the importance of the principle of judicial independence in the system of administration of justice;

8. *Reaffirms* its decision, contained in paragraph 4 of resolution 61/261, to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and accountability of managers and staff members alike;

9. *Also reaffirms* that, in accordance with paragraph 28 of resolution 63/253, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes;[6]

10. *Affirms* that recourse to general principles of law and the Charter by the Tribunals is to take place within the context of and consistent with their statutes and the relevant General Assembly resolutions, regulations, rules and administrative issuances;

11. *Requests* the Secretary-General to make every effort to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace;

12. *Stresses* the importance of ensuring access for all staff members to the new system of administration of justice, regardless of their duty station;

13. *Invites* all who are involved in the implementation and functioning of the system of administration of justice, including managers and staff members, to recognize that the administration of justice has been made possible by contributions from the Member States aiming to ensure that the system has a positive impact on staff-management relations and improves the performance of both staff and managers;

14. *Recalls* paragraph 46 of its resolution 65/251 and paragraphs 247 through 293 of the report of the Secretary-General on administration of justice at the United Nations,[1] and requests the Secretary-General to submit an updated report for consideration at the main part of its sixty-seventh session on issues relevant to its review of the statutes of the Tribunals;

II
Informal system

15. *Recognizes* that the informal system of administration of justice is an efficient and effective option for staff who seek redress of grievances;

16. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation, and, in this

[6] Resolution 63/253, annexes I and II.

regard, requests the Secretary-General to recommend, to the General Assembly, at its sixty-seventh session, additional measures to encourage recourse to informal resolution of disputes and to avoid unnecessary litigation;

17. *Takes note* of the reference in paragraph 5 of the report of the Advisory Committee on Administrative and Budgetary Questions[5] to the "culture of litigation", endorses the remainder of the paragraph, and stresses the importance of developing a culture of dialogue and amicable resolution of dispute through the informal system;

18. *Recalls* paragraph 18 of its resolution 65/251 regarding the establishment of a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes, and acknowledges that progress has been made in this regard;

19. *Requests* the Secretary-General to work with the funds and programmes in order to finalize, as early as possible, revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services that reflect the responsibility of the United Nations Ombudsman for the oversight of the entire office and enhance the coordination among the three pillars of the office, and to submit a report thereon to the General Assembly at the main part of its sixty-seventh session;

20. *Recalls* paragraph 29 of resolution 65/251, welcomes the information provided informally by the Office of the United Nations Ombudsman and Mediation Services on the financial and administrative implications resulting from settlements reached through informal dispute resolution, and requests the Office to provide another informal briefing to the General Assembly at its sixty-seventh session on such implications;

21. *Welcomes* the recommendations made by the Office of the United Nations Ombudsman and Mediation Services to address systemic and cross-cutting issues, and requests the Secretary-General to submit a report to the General Assembly, at the main part of its sixty-seventh session, containing his views on the recommendations;

22. *Also welcomes* the establishment, in 2010, of the seven regional offices of the United Nations Ombudsman and Mediation Services in Bangkok, Geneva, Nairobi, Santiago and Vienna and in the peacekeeping missions in the Democratic Republic of the Congo and the Sudan, and their initial positive impact;

III
Formal system

23. *Takes note* of paragraph 7 of the report of the Advisory Committee on Administrative and Budgetary Questions,[5] and requests the Secretary-General to explore all possible ways to bring about more coherent representation and efficient use of resources, taking into account the specificities of representation of the Secretary-General at the Tribunals, and to report thereon at the main part of its sixty-seventh session;

24. *Stresses* the need for the construction of fully equipped court rooms for the Tribunals, and requests the Secretary-General to provide functional court rooms with adequate facilities, as a matter of urgency;

25. *Emphasizes* that the formal system of administration of justice must be adequately resourced for posts, travel, hearing/conference rooms, videoconferencing, sound recording, communications systems and up-to-date computer hardware and software;

26. *Notes* the important role played by the Office of Staff Legal Assistance in providing legal assistance to staff members in an independent and impartial manner, and also notes that the Office currently represents staff members in cases before the United Nations Dispute Tribunal in New York, Geneva and Nairobi and before the United Nations Appeals Tribunal;

27. *Decides* that, pending further consideration of this issue by the General Assembly at its sixty-seventh session, the role of the Office of Staff Legal Assistance shall continue to be that of assisting staff members and their volunteer representatives in processing claims through the formal system of administration of justice, including representation, within the financial parameters agreed upon in the present resolution;

28. *Also decides* to revert, at its sixty-seventh session, to the mandate, scope and functioning of the Office of Staff Legal Assistance, and in this regard requests the Secretary-General to submit, after consultation with the Internal Justice Council and other relevant bodies, a comprehensive report proposing different options for the representation of staff members before the internal Tribunals, taking into account all relevant resolutions and reports, including the letters of the Sixth Committee to the Fifth Committee, and the relevant recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report,[5] including a detailed proposal for a mandatory staff-funded mechanism, reflecting, if necessary, the implications of the different proposals, for consideration by both the Fifth Committee and the Sixth Committee, in their respective capacities, at the sixty-seventh session;

29. *Recalls* article 2 of the statute of the Dispute Tribunal,[7] and affirms that an action instituted against the Secretary-General under the statute is an action against the Secretary-General as the Chief Administrative Officer of the United Nations responsible for administrative decisions taken by or on behalf of the Organization by staff appointed by the Secretary-General;

30. *Also recalls* article 7 of the statute of the Dispute Tribunal[7] and article 6 of the statute of the Appeals Tribunal,[8] and requests both Tribunals to review their procedures with regard to the dismissal of manifestly inadmissible cases;

31. *Decides* to amend article 7, paragraph 1 (c), of the statute of the Appeals Tribunal[8] to extend the deadline for filing appeals of Dispute Tribunal judgements from forty-five days to sixty days and to establish a thirty-day deadline for filing appeals of interlocutory orders;

32. *Recalls* paragraph 54 of resolution 62/228, and decides that the time limit for completing management evaluations may be extended by the Dispute Tribunal for a period of up to fifteen days in exceptional circumstances when both parties to a dispute agree;

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[7] Resolution 63/253, annex I.

[8] Ibid., annex II.

33. *Also recalls* paragraph 28 of resolution 63/253, reaffirms article 10, paragraphs 5 (b) and 7, of the statute of the Dispute Tribunal,[7] endorses the practice under the previous United Nations Administrative Tribunal to limit awards in any one case normally to a total of no more than two years net base salary for compensation and in exceptional cases to no more than three years net base salary, and reaffirms the requirement in article 10, paragraph 5 (b), that in all cases where the Dispute Tribunal orders the payment of a compensation higher than two years net pay, the Tribunal must provide clear and well-documented reasons for that decision;

34. *Requests* the Secretary-General to provide the General Assembly, at the main part of its sixty-seventh session, with a report on the practice of tribunals in other international organizations and in Member States comparable to the Dispute Tribunal and the Appeals Tribunal regarding the awarding of exemplary or punitive damages, including their practice with regard to awards for moral damages, emotional distress, procedural irregularities and violations of due process;

35. *Recalls* article 11, paragraph 3, of the statute of the Dispute Tribunal,[7] and affirms that judgements of the Dispute Tribunal, including judgements, orders or rulings, imposing financial obligations on the Organization, are not executable until the expiry of the time provided for appeal in the statute of the Appeals Tribunal[8] or, if an appeal has been filed in accordance with the statute of the Appeals Tribunal, until the Appeals Tribunal has completed action on such appeal in accordance with articles 10 and 11 of its statute;

36. *Also recalls* article 7 of the statute of the Dispute Tribunal and article 6 of the statute of the Appeals Tribunal, and encourages the Tribunals to continue and expand, as appropriate, their practice of consultation in the process for developing amendments to their rules of procedure;

37. *Further recalls* section I, paragraph 5, of its resolution 53/221, in which it underlined its full respect for the prerogatives and responsibilities of the Secretary-General under the Charter, and reaffirms that the resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization;

38. *Requests* the Secretary-General to submit a report to the General Assembly at the main part of its sixty-seventh session providing:

(a) A proposal for implementing the concept concerning expedited arbitration procedures for individual contractors and consultants provided in annex II to the report on administration of justice,[1] including the cost implications for various aspects of the proposal;

(b) An analysis of the policy and financial implications in the event that individual contractors and consultants covered by the proposed expedited arbitration procedure were to be permitted access to mediation under the informal system;

39. *Also requests* the Secretary-General to submit a report to the General Assembly, at the main part of its sixty-seventh session, on the access to the system of administration of justice for different categories of non-staff personnel who are not covered under the dispute resolution mechanism proposed in annex II of the report on administration of justice;[1]

40. *Further requests* the Secretary-General to include in the report requested in paragraph 39 above, information on measures to be made available with regard to the informal and formal system of administration of justice in order to assist such non-staff personnel to address disputes that may arise;

41. *Recalls* paragraph 89 of the report of the Advisory Committee on Administrative and Budgetary Questions,[8] and requests the Secretary-General to include in his report on administration of justice, to be submitted to the General Assembly at its sixty-seventh session, information on the concrete measures taken to enforce accountability in cases where contested decisions have resulted in awards of compensation to staff;

IV
Financial implications and cost-sharing arrangements

42. *Takes note* of paragraphs 19, 20 and 21 of the report of the Advisory Committee on Administrative and Budgetary Questions, decides to extend the mandate for the three ad litem judges of the Dispute Tribunal for one year, subject to review and possible extension for a further year, and also decides to approve, under general temporary assistance, three Legal Officer (P-3), two General Service (Other level) and one General Service (Local level) positions to support the ad litem judges for the same period;

43. *Requests* the Secretary-General to make every effort to expedite the finalization of an agreement on a cost-sharing arrangement for the totality of the internal justice system and to report thereon at the main part of its sixty-seventh session, including on the expected reimbursement of approximately 6.8 million United States dollars from the participating United Nations entities;

V
Other issues

44. *Requests* the Secretary-General to submit a report at the main part of its sixty-seventh session providing proposals and analysis for a mechanism for addressing possible misconduct of judges, providing additional views or analysis with regard to the proposals as contained in the reports of the Secretary-General on administration of justice at the United Nations[9] and the Internal Justice Council,[10] as well as other proposals, including a proposal for a new mechanism for addressing such misconduct consisting of one jurist from the highest judicial tribunal drawn from one Member State from each of the five geographical regions appointed or elected by the General Assembly to serve when and as needed;

45. *Stresses* that the Internal Justice Council can help to ensure independence, professionalism and accountability in the system of administration of justice, and requests the Secretary-General to entrust the Council with including the views of both the Dispute Tribunal and the Appeals Tribunal in its annual reports;

46. *Requests* the Secretary-General to submit a report to the General Assembly at the main part of its sixty-seventh session, in consultation with the Internal Justice Council and other relevant bodies, providing his recommendations

[9] A/63/314, paras. 73-79, and A/66/275, paras. 55-60.

[10] A/65/304, para. 40, and A/66/158, para. 7.

and analysis regarding the proposal in the report of the Council to the General Assembly at its sixty-fifth session[11] on a code of conduct for legal representation;

47. *Also requests* the Secretary-General to provide the reports requested in paragraphs 14, 16, 19, 21, 23, 28, 34, 38, 39, 43, 44 and 46 above, in a single comprehensive report on administration of justice to be submitted to the General Assembly at the main part of its sixty-seventh session;

48. *Invites* the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the main committee entrusted with responsibilities for administrative and budgetary matters.

[11] A/65/304, para. 41.